PAUL SMITH
INTELLECTUAL PROPERTY LAW
SUITE 330 - 1508 W. BROADWAY
VANCOUVER, B.C.
V6J 1W8

Date: June 20, 2005

Total number of pages including this one: { 137 }

Fax to: United States Patent and Trademark Office

Attention: Examiner Yvonne M. Horton

Fax Number: 703-872-9306

Your File: Application No. 10/663,419

Fax From: Paul Smith

Fax Number: 604-689-7216

Our File(s): 031P6

Paul Smith
INTELLECTUAL PROPERTY LAW
Barristers & Solicitors
Patent and Trademark Agents

Paul Smith, P.Eng., LL.B.
C. Larry Kyle, B.Sc., LL.B.
Dana L. Turner, B.Sc. (Met. Eng.), LL.B.
Lawrence Chan, B.Sc., LL.B.

Christine Sharik, Trademark Agent

June 20, 2005

Our File: 031P6

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria,VA 22313-1450

VIA FAX ONLY
703-872-9306

Attention: Examiner Yvonne M. Horton

Dear Examiner Horton:

Re: Unites States Patent Application No. 10/663,419
Title: TWIN TRACK WIRE LATH
Assignee: Sacks Industrial Corp.

Further to the Authorization to Act in a Representative Capacity filed on March 7, 2005, we enclose the following in relation to the above referenced application:

1. Transmittal Form (PTO/SB/21) (1 page);
2. Applicant's Appeal Brief in triplicate (44 pages);
3. Fee Transmittal For FY 2005 (PTO/SB/17) (1 page); and
4. Credit Card Payment Form (PTO-2038) authorizing payment in the amount of $250 to cover the appeal fee set out under 37 CFR 41.20(b)(1) (1 page).

We trust the above is satisfactory and look forward to commencement of appeal proceedings in due course.

Yours truly,

Paul Smith
Reg. No. 35,777

PS/kb/enclosures
031p6.uspto

SUITE 330 - 1508 WEST BROADWAY
VANCOUVER BRITISH COLUMBIA CANADA V6J 1W8

PTO/SB/21 (09-04)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission: 48

Application Number	10/663,419
Filing Date	09/16/2003
First Named Inventor	Abraham Jacob Secks
Art Unit	3835
Examiner Name	Yvonne M. Horton
Attorney Docket Number	031P6

ENCLOSURES *(Check all that apply)*

- [✓] Fee Transmittal Form
- [✓] Fee Attached
- [ ] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [✓] Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- [ ] Proprietary Information
- [ ] Status Letter
- [✓] Other Enclosure(s) (please identify below):

Cover Letter

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Paul Smith Intellectual Property Law		
Signature	Paul Smith		
Printed name	Paul Smith		
Date	June 20, 2005	Reg. No.	35,777

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature	Paul Smith		
Typed or printed name	Paul Smith	Date	20 June 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Title:	TWIN TRACK WIRE LATH
Serial No.:	10/663,419
Filing Date:	September 16, 2003
First Named Inventor:	Sacks
Group Art Unit:	3635
Examiner:	Horton, Yvonne Michele
Attorney Docket No.:	031p6

To: Commissioner for Patents
United States Patent and Trademark Office

APPLICANT'S APPEAL BRIEF

REAL PARTY IN INTEREST

Sacks Industrial Corp.
1975 McLean Drive
Vancouver, British Columbia
V5N 3J7 CANADA

RELATED APPEALS AND INTERFERENCES

None

STATUS OF CLAIMS

Claims 1 – 18 stand rejected and are the subject of this appeal.

STATUS OF AMENDMENTS

No amendments have been filed subsequent to final rejection.

SUMMARY OF INVENTION/CLAIMED SUBJECT MATTER

The following general description precedes a discussion of the claim limitations.

The invention relates to welded wire lath used to mount stucco plaster and the like onto a building frame.

In its apparatus aspect, the invention is welded wire lath comprising a rectangular mesh matrix of transverse (12) and longitudinal (11) strands. Referring to Fig. 1, certain pairs (14, 16) of the longitudinal strands are closely spaced, the pairs being arranged at regular intervals so as to form a plurality of elongated slots at intervals across the lath. The elongated slots allow fasteners (23) (see Fig. 4) to be applied through the slots to hold the lath to framing elements. A plurality of spacing furrs (4) are formed by bending the transverse strands (12) into indentations at predetermined spaced intervals between the longitudinal strands (11).

As best seen in Figs. 5 and 6, the mesh formed by transverse (12) and longitudinal (11) strands is defined in substantially a first plane while the tips of the indentations formed by the furrs (4) lie in a second plane that is away (spaced) from the first plane. The advantage of the offset between the two planes is appreciated by reference to Fig. 3 in which the furrs (4) are seen to maintain a spacing of the body of the lath 2, 14 and 16 lie) from the surface against which the lath is applied. This allows full embedment of the body of the lath in the stucco 27.

Because all of the longitudinal strands of the invention are located in the same plane, it is possible to compactly roll up the lath along the length of the longitudinal strands. This

would not be possible if some of the longitudinal strands were in a different plane. In the latter case, as the lath was rolled, the diameter of a given revolution for strands from one plane would be different than the diameter of the same revolution of strands from the other plane, resulting in resistance to rolling or deformation of the lath.

In another aspect, the invention comprises such lath packaged into a roll (see Fig. 2), as the geometry of the invention allows the lath to be rolled compactly. Substantial savings and convenience are thereby achieved with respect to the manipulation, storage and transport of the lath.

The invention also comprises a method of fabricating the lath referred to above, including arranging the plurality of spaced apart transverse strands (12), the first longitudinal strands (11), and the pairs (14, 16) of longitudinal strands in the geometry described above, welding them together at their points of intersection, and forming a plurality of spacing furrs (4) as described above.

Claim 1 in issue reads:

1. Welded wire lathing material *(10)* for mounting stucco plaster and the like onto a building frame, comprising,

    a) a plurality of spaced-apart, approximately parallel transverse strands *(12)* substantially located in a first plane *(paras. 0034, 0038; Figs. 5 and 6)*;

    b) a plurality of spaced apart, approximately parallel primary longitudinal strands *(11)* also substantially located in said first plane *(para. 0038)*, intersecting and in contact with said transverse strands *(12) (para. 0034)*;

c) a plurality of secondary longitudinal strands also substantially placed in said first plane *(para. 0038)* and closely spaced and approximately parallel with, some of said primary longitudinal strands *(11)*, thus forming pairs of longitudinal strands *(14, 16)*, said pairs *(14, 16)* defining a plurality of longitudinal slots located at predetermined spaced intervals extending across said lathing material *(para. 0034)*;

d) said plurality of transverse *(12)* and longitudinal *(11)* strands welded together at their points of intersections, and forming a plurality of rectangular meshes approximately located in said first plane *(paras. 0034, 0038)*; and

e) a plurality of spacing furrs *(4)* formed by bending said transverse strands *(11)* into indentations perpendicular to, and on one side of, said first plane, at predetermined space intervals extending across said lathing material, and located along said transverse strands *(11)*, said spacing furrs *(14)* situated between said longitudinal strands *(12)*, the tip of said indentations defining a second plane away from said first plane *(Figs. 5 and 6, para. 0038)*.

Claim 1 therefore defines a first plane and a second plane spaced away from the first plane. The first plane is defined in limitations (a) to (d) of claim 1 as the plane in which the following elements substantially lie:

- the plurality transverse strands and the plurality of primary longitudinal strands - limitations (a) and (b);

- the slot-forming pairs of longitudinal strands, referred to as secondary longitudinal strands - limitation (c); and,

- the rectangular meshes formed by the welded intersection of the transverse and longitudinal strands – limitation (d).

The second plane is defined by the tips of the indentations in the transverse strands that form the spacing furrs - limitation (e).

This nomenclature defining the two planes is known to persons skilled in the art. Jaenson, the only reference relied on by the examiner, also refers to two planes namely one plane for the main portion of the lath that is spaced from the apices of the furr indentations, and one plane defined by those apices: see column 2, lines 30-39, and column 6, lines 23-29 of Jaenson.

Claim 15 addresses the rolled lath embodiment of the invention:

15. A welded wire lathing material packaged into a roll *(Fig. 2 and para. 0040)* and for use in mounting stucco plaster and the like onto a building frame, comprising,

a) a plurality of spaced-apart, approximately parallel transverse strands substantially located in a first plane;

b) a plurality of spaced apart, approximately parallel primary longitudinal strands also substantially located in said first plane, intersecting and in contact with said transverse strands;

c) a plurality of secondary longitudinal strands also substantially placed in said first plane and closely spaced and approximately parallel with, some of said primary longitudinal strands, thus forming pairs of longitudinal strands, said pairs defining a plurality of longitudinal slots located at predetermined spaced intervals extending across said lathing material, said slots being wider than the shaft, but narrower than the head, of fasteners predetermined for attaching said lath to said building frame;

d) said plurality of transverse and longitudinal strands welded together at their points of intersections, and forming a rectangular mesh approximately located in said first plane;

e) a plurality of spacing furrs formed by bending said transverse strands into indentations perpendicular to, and on one side of, said first plane, at predetermined space intervals extending across said lathing material, and located along said transverse strands, said spacing furrs situated between said longitudinal strands, tip of said indentations defining a second plane away from said first plane.

Claim 18 address the method of fabricating a building wall using substantially the same structure of lath:

18. A method of fabricating a building wall using welded wire lath material adapted to be wound in rolls, for applying stucco on a building frame, comprising the steps of:

a) arranging in a transverse direction a plurality of spaced-apart, approximately parallel transverse strands substantially located in a first plane;

b) arranging in a longitudinal direction, a plurality of spaced-apart approximately parallel primary longitudinal strands also substantially located in said first plane, intersecting and in contact with said transverse strands;

c) arranging in a longitudinal direction a plurality of secondary longitudinal strands also substantially placed in said first plane and closely spaced and approximately parallel with, some of said primary longitudinal strands, thus forming pairs of longitudinal strands, said pairs defining a plurality of longitudinal slots located at predetermined spaced intervals extending across said lathing material, said slots wide enough to allow the shaft of fasteners to penetrate said slots, but narrower than the head of said fasteners, said fasteners predetermined for attaching said lath to said building frame;

d) welding together said longitudinal and said transverse strands at their points of intersections, said plurality of strands forming a rectangular mesh located in a first plane; and

e) forming a plurality of spacing furrs by bending said transverse strands into indentations perpendicular to, and on one side of, said first plane, at predetermined space intervals extending across said lathing material, said spacing furrs situated between said longitudinal strands, tip of said indentations defining a second plane away from said first plane, thus

allowing said lathing material to be kept mostly separated from said building frame when it is placed with said indentations against said building frame.

Claims 2-14 depend from claim 1 and are found in the Claims Appendix.

Claims 16 and 17 depend from claim 15 and are found in the Claims Appendix.

ISSUES - GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 7, 12 and 13 were rejected under 35 USC 102(b) as being anticipated by US Patent No. 5,540,023 to Jaenson ("Jaenson").

Claims 2 – 6, 8 – 10, 11 and 14 – 17 were rejected under 35 USC 103(a) as being unpatentable over Jaenson.

Claim 18 was rejected under 35 U.S.C 103(a) as been unpatentable over Jaenson.

GROUPING OF CLAIMS

GROUP A: Claims as a 1, 2, 4, 5, 6, 7, 12, 13, and 14.

GROUP B: Claim 3. The examiner's Final Office Action included specific comments for this claim.

GROUP C: Claims 8 and 9. The examiner included specific comments for each of those claims.

GROUP D: Claims 10 and 11. The examiner included specific comments for those two claims.

GROUP E: Claims 15 and 16. The examiner included specific comments for those two claims.

GROUP F: Claim 17. The examiner included specific comments for this claim.

GROUP G: Claim 18. The examiner included specific comments for this claim.

ARGUMENT

The examiner's rejections are all based on Jaenson, a copy of which in included in its entirety in the Cited Art Appendix.

Jaenson describes a welded wire lath product comprising a plurality of vertical parallel wires 48 (which the examiner corresponded to the "transverse strands" of claim 1) and a plurality of spaced parallel horizontal wires 50 (which the examiner corresponded to the "longitudinal strands" of claim 1). Strands 48 and 50 lie substantially in the principal plane of the Jaenson product (see Jaenson col. 2, lines 30-36). Furring crimps 52 are provided at spaced intervals along strands 48. As best seen in Figs. 3, 4a and 4b, Jaenson further discloses strands 56 at the apices of the crimps 52. Strands 56 therefore lie in a different plane than the primary plane in which strands 48 and 50 otherwise substantially lie (see Jaenson, col. 2, lines 30-36). On the other hand, the present invention avoids strands outside the primary plane.

At column 7 lines 20 to 45, Jaenson also describes the provision of a pair of horizontal strands 60, 62 at the top horizontal strand course of a sheet of lathing into which fasteners are attached to line up the lathing against the studs. Strands 60, 62 also lie

outside the primary plane of the lath, being instead in the same plane as the apices of the crimps.

The specific limitations of the claims not met by Jaenson will now be discussed in more detail, in which argument proceeds by groups of claims which will rely on common argument for all claims of each group.

GROUP A

This group consists of claim 1 and its dependent claims 2, 4, 5, 6, 7, 12, 13 and 14. The arguments will be directed to claim 1 but apply equally to the other dependent claims listed in this group.

The examiner claimed to be able to read all elements of claim 1 on Jaenson as follows. The following numbering refers to elements labeled in Jaenson as asserted by the examiner.

1. Welded wire lathing material (39) for mounting stucco plaster and the like onto a building frame, comprising,

    a) a plurality of spaced-apart, approximately parallel transverse strands (48) substantially located in a first plane;

    b) a plurality of spaced apart, approximately parallel primary longitudinal strands (50, 56) also substantially located in said first plane, intersecting and in contact with said transverse strands (48);

    c) a plurality of secondary longitudinal strands (60, 62) also substantially placed in said first plane and closely spaced and approximately parallel

with, some of said primary longitudinal strands (50, 56), thus forming pairs of longitudinal strands (60, 62), said pairs (60, 62) defining a plurality of longitudinal slots located at predetermined spaced intervals extending across said lathing material;

d) said plurality of transverse (48) and longitudinal strands (50, 56) welded together at their points of intersections, and forming a plurality of rectangular meshes approximately located in said first plane; and

e) a plurality of spacing furrs (52) formed by bending said transverse strands into indentations perpendicular to, and on one side of, said first plane, at predetermined space intervals extending across said lathing material, and located along said transverse strands (48), said spacing furrs situated between said longitudinal strands (50), the tip of said indentations defining a second plane away from said first plane.

As noted earlier, the claim defines a first plane and a second plane spaced away from the first plane. The first plane is defined in limitations (a) to (d) of claim 1 as the plane in which the following elements substantially lie:

- the plurality transverse strands and the plurality of primary longitudinal strands - limitations (a) and (b);
- the slot-forming pairs of secondary longitudinal strands - limitation (c); and,
- the rectangular meshes formed by the welded intersection of the transverse and longitudinal strands – limitation (d).

The second plane is defined by the tips of the indentations in the transverse strands that form the spacing furrs - limitation (e).

The limitations identifying the planes in which the elements of the invention lie are significant. Nonetheless, in citing and relying on Jaenson to reject claims 1, 7, 12 and 13, the examiner appears to misinterpret the location of several elements of Jaenson in relation to the planes defined by claim 1.

Claim 1 expressly specifies that the plurality of secondary longitudinal strands (those defining a plurality of slots) are "also substantially placed in said first plane". The first plane was defined as the plane in which the parallel transverse strands and the parallel primary longitudinal strands are substantially located and in which they intersect. This is clearly different from the Jaenson arrangement. In Jaenson, the slot-forming strands 60, 62 are not in the primary plane in which the transverse and longitudinal strands intersect.

We turn to discuss more specifically the several limitations of claim 1 that are not taught by the Jaenson.

1. Limitation (b)

Limitation (b) requires that the primary longitudinal strands be substantially located in the first plane (and therefore obviously not in the second plane that is spaced away from the first plane).

The examiner contends that Jaenson's strands 50, 56 are substantially located in the first plane thereby satisfying that limitation. But Jaenson clearly teaches a placement of strands 56 in the second plane, i.e. the plane defined in limitation (e) by the tips of the indentations, rather than in the first plane as required by limitation (b). This is apparent

from Jaenson's Figs. 3, 4a and 4b, each of which clearly shows strand 56 at or past the tip of the indentations. This is clearly not in the first plane defined by the claim.

The examiner's assertion that limitation (b) of claim 1 reads on Jaenson is unfounded.

2. Limitation (c) – "in said first plane"

Limitation (c) requires that a plurality of secondary longitudinal strands also be substantially in the first plane and paired to form longitudinal slots.

The examiner contends that Jaenson's strands 60, 62 are substantially in the first plane in accordance with the limitation. The only strands taught by Jaenson that form elongated slots are strands 60, 62. But both of those strands are in the same plane as the tip of indentations, i.e. in the second plane defined by limitation (e), not in the first plane. This is clearly shown in Figs. 4a and 4b.

The examiner's assertion that limitation (c) reads on Jaenson is unfounded.

3. Limitation (c) – "plurality of longitudinal slots"

Limitation (c) also requires a plurality of longitudinal slots defined by pairs of the secondary longitudinal strands.

The examiner contends that this is taught by Jaenson, referring to strands 60, 62.

Jaenson does not teach or show a plurality of longitudinal slots defined by longitudinal strands 60, 62. Jaenson only shows one pair (60, 62) of strands that define a single slot, and then only at the edge of the lath. It can be seen in Jaenson's Figs. 4a and 4b that the

structure on which strand 60 and 62 are placed at a terminal flat end of strands 54. Jaenson confirms at column 7, lines 21-27 that the strand pair 60, 62 is located at the top horizontal course of a sheet of the lathing. It follows that slot-forming pairs of strands are not taught as being repeated in a plurality across the lath, and consequently are not shown in Jaenson.

For this additional reason, the examiner's assertion that limitation (c) reads on Jaenson is unfounded.

4. Limitation (c) – "slots located at predetermined spaced intervals extending across the lathing material"

Limitation (c) further requires that the plurality of longitudinal slots be located at predetermined spaced intervals extending across the lath.

In the Final Office Action, the examiner appears to acknowledge that the claim requires that the slot be repeated at predetermined spaced intervals across the lath in the claim [Final Office Action, page 7, Response to Argument, second paragraph, last sentence] but the examiner failed to acknowledge the failure of Jaenson to teach this feature.

The examiner's assertion that limitation (c) reads on Jaenson is unfounded.

5. Limitation (d)

Limitation (d) requires that the rectangular meshes formed by the intersection of the transverse and longitudinal strands be approximately located in the first plane.

Referring to Jaenson's Fig. 3, those rectangular meshes that are formed in part by strands 56, are otherwise completed by longitudinal strands 50 that are adjacent to strands 56 and by transverse strands 54. But as seen in Jaenson's Figs. 4a and 4b, longitudinal strands 56 are located in the second plane as defined by limitation (e), i.e. they are substantially in the same plane as the tips of the indentations, not in the first plane. Because strands 56 are in the second plane while strands 50 and 54 are in the first plane, the meshes that comprise in part strands 56 must straddle both planes. They cannot be approximately located in the first plane as they are equally in the second plane. A person skilled in the art would plainly read the limitation as not being met.

The examiner made no comment in the Office Actions on this limitation except to assert that it reads on Jaenson. Such assertion is unfounded.

6. Limitation (e)

Limitation (e) requires that the spacing furrs be situated between the longitudinal strands.

The examiner takes the position that Jaenson's spacing furrs are located between longitudinal strands 50. However, the examiner ignores Jaenson's longitudinal strands 56 that sit directly on the tips of the furr indentations. The furrs can not be located between the longitudinal strands in accordance with the claim limitation since the furrs sit directly on some of those longitudinal strands (56).

The examiner's assertion that this limitation reads on Jaenson is unfounded.

Summary comments for claim 1

The foregoing shows that on 6 points relating to the planes in which elements of the invention are defined, Jaenson fails to anticipate claim 1.

Jaenson also offers no teaching to suggest the placement of all of the longitudinal and transverse strands in the same plane (save for the furrs formed in the transverse strands). In fact, Jaenson expressly teaches away from this at column 3, lines 6-9 where he says:

> *"It is, therefore, highly advantageous for as much of the metal reinforcing mesh as possible to be embedded as far as possible into the scratch coat, preferably, all the way to the depth of the furring crimp."*

This teaches directly away from the invention, as the invention contemplates that all of the strands should be substantially in the same first plane, corresponding to the body of the lath.

The geometry of Jaenson renders Jaenson's lath effectively unrollable. If one were to roll the Jaenson lath along the length of strands 54, it will be appreciated that this would stretch and deform the furrs which would be subjected to a straightening tension.

Alternatively, one might attempt to roll the Jaenson lath along the lengths of strands 50 and 56. However, in Jaenson, strands 50 are in a first plane, and strands 56 are in a second plane, spaced from the first plane (see column 2, lines 25-39 and column 6, lines 18-29) both bound in spaced relationship by the overall lath structure. This essentially forms a truss arrangement which wouild be ripped apart of one were to attempt to roll the lath. The satial offset between the planes containing strands 50 and 56 means that upon each revolution of the lath, the revolution of strands 50 will define a different diameter than the revolution of strands 56. Since the strands are otherwise constrained by their attachment to the same lath, this introduces stresses that strongly resist rolling.

This problem is overcome by the present invention which is effective in allowing compact rolling of the lath along the length of the longitudinal strands, which are all in the same plane.

As Jaenson expressly teaches away from the geometry of the present invention that allows tight rolling of the lath, the invention is also not obvious in view of Jaenson and it represents a substantial contribution to the art.

It is submitted that claim 1 patentably distinguishes with Jaenson.

GROUP B

This group consists of claim 3. Claim 3 claims the lath of claim 1 wherein the wound into rolls along the length of the longitudinal strands.

The arguments in relation to claim 1 are reiterated for this dependent claim.

As discussed above, Jaenson also does not disclose that his lath can be rolled effectively, and its geometry in fact prevents effective rolling. It follows that the invention as defined by claim 3 is not obvious in view of Jaenson.

GROUP C

This group consists of claims 8 and 9. Both claims recite longitudinal strands having a flattened cross-sectional profile. Both are dependent on claim 1.

The arguments set out above for Group A are reiterated for this group insofar as the claims depend on claim 1.

The examiner argued in relation to these specific claims that because the application does not show any criticality for a shaped cross-section over a flattened one, the selection of either must be within the general skill of a worker in the art. However, the examiner has failed to point to any references or teaching suggesting the use of a flattened cross-sectional profile [*In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)], and the examiner has not suggested any convincing line of reasoning why it would be obvious to adopt a flattened profile [*Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985)].

In fact, it would certainly seem that the natural approach to constructing a lath using nominally round wires would be to leave them round. In order to support a finding of obviousness to go to the effort to deviate from the natural shape of the wires and to flatten them, the examiner should point to a reference showing a teaching to do so. This has not been done, and accordingly the finding of obviousness is not supported.

The inventors have recognized that having a flattened cross-sectional profile better adapts the lath to be rolled tightly, in accordance with an objective of the invention. A flattened profile has less shape memory which might otherwise impede the rolling of the lath. The flat profile also distributes the contact area of the flattened wire to promote better adherence of the stucco to the lath.

GROUP D

This group consists of claims 10 and 11. Both claims recite specific angular parameters for the sides of the spacing furrs. Both are dependent on claim 1.

The arguments set out above for Group A are reiterated for this group insofar as the claims depend on claim 1.

The reasons for the angular parameters are set out in paragraph 0041 of the disclosure. The parameters allow for nesting of overlapping furrs in the event their positions coincide when the lath is rolled.

The examiner argued that wider angles allows a more stable application of the lath against a structure and that the angles of the sides of the furr were therefore a mere matter of design choice. However, the examiner appears to be speculating in that regard. The examiner fails to take into account that when used, laths are immediately fastened to surfaces, such that the varying degrees of stability against the surface that might be offered by wider or shallower angles are effectively inconsequential. A designer of lath would know this and would consider that varying the angles of the lath and its effect on stability prior to fastening will not have any useful effect.

On the other hand, the present invention allows nesting of the furrs when the lath is rolled, such rolling being difficult or impossible with prior art laths that include longitudinal furrs along the tips of the furrs.

It is submitted that the claimed feature is therefore non-obvious over Jaenson.

GROUP E

This group consists of claims 15 and its dependent claim 16.

Claim 15 recites the same limitations as claim 1 except that the lath is packaged into a roll and the dimensions of the slots formed by pairs of secondary longitudinal strands are defined in relation to the dimensions of fasteners.

In this brief's argument for Group A, 6 features were shown not to be taught by Jaenson. The same 6 features are recited in claim 15 and the arguments set our above in Group A are reiterated in respect of claim 15.

GROUP F

This group consists of claim 17. Claim 17 depends on claim 16 and claim 15 and recites a flattened cross sectional profile for the strands.

The arguments in relation to claim 15 are reiterated.

In addition, the arguments in relation to Group C regarding the non-obviousness of a flattened cross section profile are reiterated for this group.

GROUP G

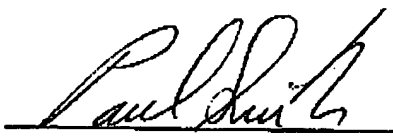
This group consists of claim 18. Claim 18 recites the method of fabricating the lath according to claim 1.

The examiner took the position that Jaenson inherently discloses the method of fabricating a building wall comprising the structure of the Jaenson lath. However, the examiner's position is predicated on an anticipation of claim 1 by Jaenson. The arguments set out in Group A in relation to claim 1 therefore apply equally for claim 18 and are reiterated.

For all of the foregoing reasons, it is respectfully submitted that the claims as currently presented are allowable and that the examiner erred in rejecting them on the basis of Jaenson.

Date: June 20, 2005

Respectfully submitted,



Attorney acting in a representative capacity
pursuant to 37 CFR 1.34
Paul Smith, Reg. No. 35,777

Paul Smith Intellectual Property Law
Suite 330
1508 West Broadway
Vancouver, British Columbia
Canada V6J 1W8

Tel: 604-689-7276
Fax: 604-689-7216
Email: psmith@psipl.com

CLAIMS APPENDIX

1. Welded wire lathing material for mounting stucco plaster and the like onto a building frame, comprising,

a) a plurality of spaced-apart, approximately parallel transverse strands substantially located in a first plane;

b) a plurality of spaced apart, approximately parallel primary longitudinal strands also substantially located in said first plane, intersecting and in contact with said transverse strands;

c) a plurality of secondary longitudinal strands also substantially placed in said first plane and closely spaced and approximately parallel with, some of said primary longitudinal strands, thus forming pairs of longitudinal strands, said pairs defining a plurality of longitudinal slots located at predetermined spaced intervals extending across said lathing material;

d) said plurality of transverse and longitudinal strands welded together at their points of intersections, and forming a plurality of rectangular meshes approximately located in said first plane; and

e) a plurality of spacing furrs formed by bending said transverse strands into indentations perpendicular to, and on one side of, said first plane, at predetermined space intervals extending across said lathing material, and located along said transverse strands, said spacing furrs situated between said longitudinal strands, the tip of said indentations defining a second plane away from said first plane.

2. A lathing material as in Claim 1 wherein said slots are wide enough to allow the shaft of fasteners to penetrate said slots, but narrower than the head of said fasteners, said fasteners predetermined for attaching said lath to said building frame.

3. A lathing material as in Claim 1 wound into rolls along the length of said longitudinal strands.

4. A lathing material as in Claim 1 wherein said transverse strands have cross-sections from 0.032 inches to 0.063 inches in diameter and grid spacing from 1 inch to 2 inches.

5. A lathing material as in Claim 1 wherein said transverse and longitudinal strands have nominal cross section from 0.0475 inches to 0.054 inches and grid spacing from 1.4 inches to 1.6 inches.

6. A lathing material as in Claim 5 wherein strands forming said pairs of longitudinal strands range from 0.035 inches to 0.055 inches in nominal cross section.

7. A lathing material as in Claim 1 wherein said primary and secondary longitudinal strands have a shaped cross-section profile.

8. A lathing material as in Claim 7 wherein said longitudinal strands have a flattened cross-section profile.

9. A lathing material as in Claim 1 wherein said longitudinal strands have a flattened cross-section profile equivalent to a circular cross section of 0.035 inches to 0.055

inches and the strands forming said pairs of longitudinal strands have a flattened cross-section profile with a minor axis ranging from 0.015 inches to 0.025 inches and a major axis ranging from 0.050 inches to 0.070 inches.

10. A lathing material as in Claim 1 wherein the angles of the side of said spacing furrs are inclined to approximately between 20 degrees and 50 degrees from said first plane.

11. A lathing material as in Claim 9 wherein the angles of the side of said spacing furrs are formed to between 40 degrees and 50 degrees from said first plane.

12. A lathing material as in Claim 1 wherein said transverse strands are in the vertical direction and said primary and secondary longitudinal strands are in the horizontal direction.

13. A lathing material as in Claim 1 wherein the strands are made of galvanized steel.

14. A lathing material as in Claim 1 wherein the spacing furrs extend from 1/8 to ½ inches from said first plane.

15. A welded wire lathing material packaged into a roll and for use in mounting stucco plaster and the like onto a building frame, comprising,

    a) a plurality of spaced-apart, approximately parallel transverse strands substantially located in a first plane;

b) a plurality of spaced apart, approximately parallel primary longitudinal strands also substantially located in said first plane, intersecting and in contact with said transverse strands;

c) a plurality of secondary longitudinal strands also substantially placed in said first plane and closely spaced and approximately parallel with, some of said primary longitudinal strands, thus forming pairs of longitudinal strands, said pairs defining a plurality of longitudinal slots located at predetermined spaced intervals extending across said lathing material, said slots being wider than the shaft, but narrower than the head, of fasteners predetermined for attaching said lath to said building frame;

d) said plurality of transverse and longitudinal strands welded together at their points of intersections, and forming a rectangular mesh approximately located in said first plane;

e) a plurality of spacing furrs formed by bending said transverse strands into indentations perpendicular to, and on one side of, said first plane, at predetermined space intervals extending across said lathing material, and located along said transverse strands, said spacing furrs situated between said longitudinal strands, tip of said indentations defining a second plane away from said first plane.

16. A lathing material as in Claim 15 wherein longitudinal strands have a shaped cross-section profile.

17. A lathing material as in Claim 16 wherein said longitudinal strands have a flattened cross-section profile.

18. A method of fabricating a building wall using welded wire lath material adapted to be wound in rolls, for applying stucco on a building frame, comprising the steps of:

a) arranging in a transverse direction a plurality of spaced-apart, approximately parallel transverse strands substantially located in a first plane;

b) arranging in a longitudinal direction, a plurality of spaced-apart approximately parallel primary longitudinal strands also substantially located in said first plane, intersecting and in contact with said transverse strands;

c) arranging in a longitudinal direction a plurality of secondary longitudinal strands also substantially placed in said first plane and closely spaced and approximately parallel with, some of said primary longitudinal strands, thus forming pairs of longitudinal strands, said pairs defining a plurality of longitudinal slots located at predetermined spaced intervals extending across said lathing material, said slots wide enough to allow the shaft of fasteners to penetrate said slots, but narrower than the head of said fasteners, said fasteners predetermined for attaching said lath to said building frame;

d) welding together said longitudinal and said transverse strands at their points of intersections, said plurality of strands forming a rectangular mesh located in a first plane; and

e) forming a plurality of spacing furrs by bending said transverse strands into indentations perpendicular to, and on one side of, said first plane, at predetermined space intervals extending across said lathing material, said spacing furrs situated between said longitudinal strands, tip of said indentations defining a second plane away from said first plane, thus allowing said lathing material to be kept mostly separated from said building frame when it is placed with said indentations against said building frame.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None

CITED ART APPENDIX

U.S. Patent No. 5,540,023 to JAENSON.

031p6.appealbrief

PTO/SB/17 (12-04v2)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL For FY 2005

☑ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT ($) 250.00

Complete if Known	
Application Number	10/663,419
Filing Date	09/16/2003
First Named Inventor	Abraham Jacob Sacks
Examiner Name	Yvonne M. Horton
Art Unit	3635
Attorney Docket No.	031P3

METHOD OF PAYMENT (check all that apply)

☐ Check ☑ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account Deposit Account Number: _____ Deposit Account Name: _____

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES Fee ($)	FILING FEES Small Entity Fee ($)	SEARCH FEES Fee ($)	SEARCH FEES Small Entity Fee ($)	EXAMINATION FEES Fee ($)	EXAMINATION FEES Small Entity Fee ($)	Fees Paid ($)
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 20 or HP =	_____	x _____	= _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 3 or HP =	_____	x _____	= _____

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims Fee ($)	Fee Paid ($)
_____	_____

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee ($)	Fee Paid ($)
_____ - 100 =	_____	/ 50 = _____ (round up to a whole number)	x _____	= _____

4. OTHER FEE(S)

	Fee Paid ($)
Non-English Specification, $130 fee (no small entity discount)	
Other (e.g., late filing surcharge): Fee for filing Appeal Brief	$250.00

SUBMITTED BY

Signature	Paul Smith	Registration No. (Attorney/Agent) 35,777	Telephone 604-689-7276
Name (Print/Type)	Paul Smith		Date June 20, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.